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to recover the amount of the tax so levied. *Held*, that they might recover, as the trust was not a "joint-stock association" within the Act. *Crocker v. Malley* (March 17, 1917) U. S. Sup. Ct. Oct. Term, 1918, No. 649.

See COMMENTS, p. 690, *supra*.

WILLS—JOINT AND MUTUAL—CONTRACT NOT TO REVOKE.—The plaintiff and his wife executed a joint and mutual will devising all the property owned by them jointly or severally to the survivor. Before and after the execution, the plaintiff purchased property, taking the title to part in his wife's name and to the remainder in their names jointly. The wife later secretly made another will, leaving her entire estate to the defendants, her son and daughter by a former marriage. The later will having been admitted to probate, the plaintiff brought this action in equity against the devisees to enforce the terms of the prior will. *Held*, that the plaintiff was entitled to such relief. *Hermann v. Ludwig et al.* (1919, App. Div.) 174 N. Y. Supp. 469.

Equity will enforce the terms of a joint and mutual will which was made pursuant to a contract by both parties not to revoke the same, although the deceased has done so by a later will. *In re Hoffert's Estate* (1917) 65 Pa. Super. Ct. 515; *Bower v. Daniel* (1906) 198 Mo. 289, 95 S. W. 347. The theory is that the will itself is revoked, being an ambulatory instrument, but equity enforces the contract by imposing a trust on the devisees of the later will according to the provision of the earlier one. See COMMENT (1918) 27 YALE LAW JOURNAL, 542. The question in the principal case is whether such a contract has been established. Although a joint and mutual will might well be in itself sufficient evidence of a contract not to revoke, the rule seems settled to the contrary. *Buchanan v. Anderson* (1905) 70 S. C. 454, 50 S. E. 12; *Estate of Crawley* (1890) 136 Pa. 628, 20 Atl. 567. But such a contract may be established if there are in addition circumstances and indirect evidence other than the will itself. See *Edson v. Parsons* (1898) 155 N. Y. 555, 567; 50 N. E. 268. So in the principal case. And where the survivor has taken benefits under the mutual will and later revoked, the courts require less outside evidence to find a contract; for it would be inequitable for the survivor to benefit and not comply with his agreement. *Rastetter v. Honinger* (1915) 214 N. Y. 66, 108 N. E. 210; *Frazier v. Patterson* (1909) 243 Ill. 80, 90 N. E. 216. Also, there is authority that either party is privileged to rescind the contract and revoke, if he does so during the lives of both by sufficient notice. See *Stone v. Haskins* [1905] P. 194; *Duvale v. Duvale* (1896, Ch.) 54 N. J. Eq. 581, 588; 35 Atl. 750. But no such notice was given in the instant case. Therefore, the court seems justified in its decision, since the circumstances strongly indicated a contract, and the equities of the case were strongly in favor of the plaintiff.